

Rule 18, Ariz.R.Crim.P.

**MOTION TO DENY DEFENDANT A JURY TRIAL ON
POSSESSION OF MARIJUANA, A CLASS ONE MISDEMEANOR**

The State of Arizona, by and through the undersigned deputy, hereby moves for this Court to deny the defendant a jury trial on the charge of possession of marijuana, a class one misdemeanor. This motion is supported by the following Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

The defendant has been charged with possession of marijuana. Pursuant to A.R.S. § 13-702(G)(2), the State has designated the offense a class 1 misdemeanor. The defendant is not entitled to a jury trial on this offense.

In *Derendal v. Griffith*, 209 Ariz. 416, 104 P.3d 147 (2005), the Arizona Supreme Court held that a defendant is entitled to a jury trial for any offense that has a common law antecedent that guaranteed a right to trial by jury at the time of Arizona statehood. See also Arizona State Constitution Article II, § 23. In addition, *Derendal* recognized that a defendant is entitled to a jury trial for a “serious” offense under Art. 2, § 24 of the Arizona Constitution.

As possession of marijuana was not a crime at the time of statehood, the defendant is not entitled to a jury trial on that basis. Furthermore, there are no statehood jury trial eligible offenses that are substantially similar to possession of marijuana. See *State v. Stoudamire*, 2006 WL 2129993 (AZ Ct. of App, Div. Two, August 1, 2006) (the statehood crime of possession of opium is not substantially similar to the current day offense of possession of marijuana as they involve different drugs.)

Nor does the offense of possession of marijuana as a class 1 misdemeanor qualify for a jury trial under *Derendal, supra*, as a “serious” offense. *Derendal* stated that there is a rebuttable presumption that misdemeanors are petty, not serious, offenses. 209 Ariz. at 425, 104 P.3d at 156. The legislation relating to the possession of marijuana, when designated as a misdemeanor, further points to the conclusion that it is a petty offense. For example, A.R.S. § 13-702(G)(2) allows the prosecutor to designate the offense a misdemeanor, while A.R.S. § 13-802(A) and 13-707(A)(6) set the maximum fine at \$2500 and limit incarceration to six months. In addition, A.R.S. § 13-901.01 mandates probation in most circumstances.

To overcome the presumption that the offense is petty, the defendant must establish that the crime of possession of marijuana as a class one misdemeanor carries additional severe, direct, and uniformly applied statutory consequences that show the legislature deems it a serious offense. See *Derendal*, 209 Ariz. at 425, 104 P.3d at 156. A defendant cannot meet this burden by merely showing that the licensing requirements for some occupations would be affected by a misdemeanor possession of marijuana conviction. See *Stoudamire*, *supra*.